

STATE OF MAINE
PENOBCOT, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-05-30

x

Old Town Canoe Company :

Plaintiffs : COMPLAINT

- against -

Continental Casualty Company, :

Defendants. :

FILED & ENTERED
SUPERIOR COURT
JAN 26 2005
PEN

x

Plaintiff Old Town Canoe Company, through its counsel, complains against defendant Continental Casualty Company:

1. Old Town Canoe Company, the plaintiff, is a Maine corporation with its principal place of business in Old Town, Maine.
2. Old Town Canoe Company manufactures and sells canoes and kayaks.
3. Old Town Canoe Company is an affiliate of Johnson Outdoors Inc.
4. Defendant Continental Casualty Company is a member of the CNA group of insurance companies.
5. Johnson Outdoors Inc. purchased commercial property insurance coverage from defendant Continental Casualty Company, policy # 251917528, covering the period between October 1, 2002 and October 1, 2003.(hereinafter "CNA Policy").
6. The CNA policy purchased by Johnson Outdoors included as named insureds the

subsidiaries and affiliates of Johnson Outdoors Inc.

7. The plaintiff Old Town Canoe Company was an affiliate of Johnson Outdoors Inc.

8. The CNA policy provided a master policy limit of \$40 million per occurrence, with a deductible of \$250,000 per occurrence.

9. The CNA policy insures covered losses of finished goods inventory at the inventory's regular cash selling price, less discounts and charges to which such merchandise would have been subject if the loss had not occurred.

10. Johnson Outdoors Inc. paid \$497,801 in premium for the CNA policy.

11. In or around September 2003, Old Town Canoe Company sustained damage to its inventory of canoes and kayaks stored in trailers at its location in Old Town, Maine.

12. The retail value of the canoes and kayaks damages by the loss is estimated to be at least \$655,000.00.

13. Old Town Canoe Company provided notice of this loss to CNA in sufficient time for CNA to determine whether the claim was covered by the policy.

14. In its investigation of the Old Town Canoe Company claim, a CNA representative took statements from Old Town Canoe Company personnel in May 2004.

15. After taking these statements, CNA did not make a determination of coverage, but had another representative again take statements from Old Town Canoe Company personnel in July 2004.

16. After taking statements from Old Town Canoe Company a second time, CNA did

not make a determination of coverage, but sent an attorney to Old Town Canoe Company in September 2004 to take sworn deposition statements from Old Town Canoe Company personnel.

17. In November 2004, at least 8 months after CNA first received notice of the claim, CNA denied insurance coverage on the claim.

COUNT I

18. Old Town Canoe Company incorporates ¶¶ 1-17.

19. Old Town Canoe Company's inventory losses are covered by the CNA policy.

20. Old Town Canoe Company has substantially satisfied all conditions precedent to recovery under the CNA policy for its inventory losses.

21. Defendant Continental Casualty Company breached its contract of insurance with Johnson Outdoors Inc., and of which Old Town Canoe Company is a named insured, by failing to acknowledge coverage of the claim under the policy and failing to pay Old Town Canoe Company for its losses under the terms of the CNA policy.

22. Defendant Continental Casualty Company breached its contractual duty to act in good faith and deal fairly with Old Town Canoe Company in its handling of Old Town Canoe Company's claim.

COUNT II

23. Old Town Canoe Company incorporates ¶¶ 1-17, and 19-22

24. Defendant Continental Casualty Company violated 24-A M.R.S.A. § 2436-A(1),

WHEREFORE, the plaintiff Old Town Canoe Company seeks judgment against the defendant Continental Casualty Company as follows:

1. For damages for breach of contract, in an amount to be shown at trial;
2. Costs and disbursements, reasonable attorney's fees and interest on damages at the rate of 1 1/2% per month

Date: January 25, 2005

HARVEY & FRANK

HARVEY & FRANK
Two City Center
Fourth Floor
Portland, Maine 04112-0126
(207) 775-1300
(207) 775-5639 (facsimile)

By: Robert S. Frank
Robert S. Frank
Bar No. 2550

Counsel for Plaintiff